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Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICHOLAS BERNHARD, RALPH NATALE,
KIRK CONAWAY, and ROY KOHN as Trustees
of THE HEALTH FUND 917 and the LOCAL 868
IBT PENSION FUND; HEALTH FUND 917
and the LOCAL 868 IBT PENSION FUND,

Plaintiffs,

v.

THE MAJOR AUTOMOTIVE COMPANIES, INC., d/b/a
MAJOR CHEVROLET, INC., and MAJOR DODGE, INC.;
HAROLD BENDEL; MAJOR CHEVROLET INC; and
MAJOR DODGE, INC. and HAROLD BENDEL

Defendants.
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10 CV 2736 (SJF)

DEFENDANTS'
RESPONSE TO
PLAINTIFFS'
STATEMENT PURSUANT
TO LOCAL
CIVIL RULE 56.1

Pursuant to Local Civil Rule 56.1 of the United States District Court for the Eastern District of New York, Defendants respond to the three additional purported "undisputed material facts" in Plaintiffs' Responses to Defendant's Rule 56.1 Statement of material facts set forth below:

II. Plaintiffs' Statements of Undisputed Material Facts

32. Admit that Defendants were responsible for creating or imputing the ADP Payroll codes, but asserts that Defendants are not claiming they were inaccurate. Defendants further assert that it would be impossible to accurately assess any contributions owed from the ADP Payroll records, which is exemplified by the fact that between April 2009 and as late as April 2011, the Funds submitted

revised audit findings, adjusted downward from over \$1.9 M to less than \$500,000, after Major questioned the findings and submitted documentation to challenge them. Bendel Aff., at para. 14.

33. Deny. Joann Emmons testified that the Funds were provided no explanation from the auditors as to how they determined their findings. See Deposition of Joann Emmons taken on July 8, 2011 and annexed to the Affirmation of Adam C. Weiss, Esq., dated August 1, 2011, as Exhibit "D" ("Emmons Dep."), at p. 53.

34. Deny. Plaintiff's citation is conclusory and outside the affiant's knowledge (specifically what Rodas testified about at his deposition).

Dated: Lake Success, New York
September 2, 2011

MILMAN LABUDA LAW GROUP PLLC

By: /s/
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